Committee on Education and the Workforce
John A. Boehner, Chairman

Investigation of ULLICO Inc.

October 23, 2003

2181 Rayburn House Office Building

This Report has not been officially adopted by the Committee on Education and the Workforce (or pertinent subcommittee thereof) and therefore may not necessarily reflect the views of its Members.

REPORT OF THE COMMITTEE
ON EDUCATION AND THE WORKFORCE
CONCERNING ITS INVESTIGATION OF ULLICO INC.

OCTOBER 23, 2003

SUMMARY

In early 2003, pursuant to the constitutional authority of the U.S. House of Representatives and the oversight authority conferred upon it by the Rules of the House of Representatives, the Committee on Education and the Workforce (the "Committee") commenced an investigation into certain stock dealings and transactions by individuals associated with the Board of Directors of ULLICO Inc. ("ULLICO" or the "Company").

The purpose of the Committee's investigation was to examine matters within its legislative and oversight jurisdiction regarding alleged misconduct of officers of the Company and/or members of its Board of Directors, including but not limited to the methodology employed for the valuation of the Company's stock, the purchase and sale of this stock by officers, directors, and other shareholders of the Company, the effect these transactions had on the Company's union and multi-employer benefit plan shareholders, and related matters within the Committee's jurisdiction.

In the course of its investigation, the Committee requested and received more than 95,000 pages of documentary evidence. In June 2003, the Committee convened an investigatory hearing examining questionable stock transactions at ULLICO, at which it received oral and documentary testimony from both fact and expert legal witnesses.

Based on its investigation, the Committee remains deeply concerned that the transactions undertaken by certain officers and members of ULLICO's Board of Directors in connection with the Company's stock repurchase program may have violated federal labor law under the Labor-Management Reporting and Disclosure Act of 1959 and/or federal pension law under the Employee Retirement Income Security Act of 1974. The Committee strongly recommends that those regulatory and investigative authorities currently investigating ULLICO and these transactions give the closest scrutiny to their lawfulness under the aforementioned federal labor and pension laws. Should these agencies determine that federal labor or pension laws are insufficient to adequately safeguard the rights of those whom the laws were enacted to protect, the Committee welcomes an analysis of any such deficiencies and recommended legislative or administrative solutions. The Committee in turn will continue the vigorous exercise of its oversight authority to ensure that these laws are effective in protecting the rights of American workers, and if they are not, in considering legislative solutions.

COMMITTEE ACTION

In the spring of 2003, the Committee commenced its investigation into ULLICO and a series of questionable stock transactions brought to light at the Company. The purpose of the Committee's investigation was to examine matters within its legislative and oversight jurisdiction regarding alleged misconduct of officers of the Company and/or members of its Board of Directors, including but not limited to the methodology employed for the valuation of the Company's stock, the purchase and sale of this stock by officers, directors, and other shareholders of the Company, the effect these transactions had on the Company's union and multi-employer benefit plan shareholders, and related matters within the Committee's jurisdiction.

By way of Requests for Production dated March 18, 2003 (the "Requests"), the Committee requested from ULLICO the production of responsive documents, records, and materials concerning these matters. A copy of the Committee's Requests is included with this report as Appendix A. The Committee called for the production of these documents no later than the close of business on April 17, 2003.

Among the materials requested in the Committee's Requests were all documents concerning a certain report to the officers and Board of Directors of ULLICO prepared by the Honorable James R. Thompson, Jr., formerly the Governor of the State of Illinois, and at the time of the Requests, a partner in the law firm of Winston and Strawn of Chicago, Illinois. In April 2002, Governor Thompson had been engaged by ULLICO as Special Counsel to investigate the stock transactions at issue and report to ULLICO's Board. It is the Committee's understanding that Governor Thompson's Report, entitled "Report of the Special Counsel: ULLICO Stock Purchase Offer and Repurchase Programs and Global Crossing Investment" (the "Thompson Report"), was delivered to ULLICO's Board on or around November 26, 2002.

From the time of its delivery to the Board until late March 2003, ULLICO maintained that the Thompson Report was confidential to the Board; that it was protected from disclosure to shareholders, investigators, or the public by the attorney-client privilege; and that ULLICO would not release the Thompson Report to those federal and state investigative authorities examining the lawfulness of these stock transactions.[1]

The Committee's Requests called for production of the Thompson Report (and all other responsive documents) by April 17, 2003. On March 28, 2003, the Board of ULLICO apparently reversed its prior position and announced that it would release copies of the Thompson Report to its shareholders. In light of ULLICO's decision to release the Thompson Report, by letter dated March 31, 2003, the Committee requested ULLICO's immediate production of the Thompson Report by the close of business on April 1, 2003. *See* Appendix B.

[1] The Committee understands that as of March 2003, ULLICO and the stock transactions at issue were being investigated by the federal Departments of Labor and Justice, the Securities Exchange Commission, the Commissioner of Insurance of the State of Maryland, and a federal grand jury in the District of Columbia.

On April 2, 2003, ULLICO produced to the Committee a copy of the Thompson Report and its three-volume Appendix (the Thompson Report is appended to the Committee's June 17, 2003 hearing report, *see* Appendix E, *infra*, at Appendix E; the Appendix to the Thompson Report was included in the record of the Committee's hearing and is available through the offices of the Committee).

In addition to these materials, ULLICO at that time produced a document prepared by Sidley Austin Brown & Wood LLP of Washington, DC, then counsel to ULLICO, entitled "Summary Analysis of the 'Report of the Special Counsel: ULLICO Stock Purchase Offer and Repurchase Programs and Global Crossing Investment'" dated April 2, 2003, and an additional document entitled "ULLICO Report of the Special Committee to the Board of Directors," dated March 25, 2003.

In further response to the Committee's Requests, ULLICO on April 17, 2003 produced documents Bates Numbered U-MIA-00001 to U-MIA-52460. On May 9, 2003, ULLICO produced additional documents Bates Numbered ULLICO-000000001 to ULLICO-000041543. A final production of documents Bates Numbered BS-00001 to BS-01965 was made on May 15, 2003.

Based on preliminary review of the documents it had received in response to its Requests to date, the Committee on April 24, 2003 announced that it would convene hearings to further investigate the ULLICO matter. On May 8, 2003, the Committee announced that it had issued a subpoena to the then-Chairman of ULLICO, Robert A. Georgine, to testify before the Committee on June 10, 2003. On May 20, 2003, the Committee rescinded its May 8 subpoena and reissued a subpoena commanding Mr. Georgine to appear before the Committee at 10:30 a.m. on June 17, 2003. Copies of these *subpoenae* are attached to this Report at Appendices C and D.

On June 17, 2003, the Committee convened a hearing on the ULLICO matter entitled "The ULLICO Scandal and Its Implications for U.S. Workers."[2] Invited to testify before the Committee were Mr. Georgine, the former President, Chairman and CEO of ULLICO (pursuant to the Committee's May 20, 2003 subpoena); Warren E. Nowlin, Esq., a partner of the law firm of Williams Mullen; and Damon Silvers, Esq., Special Counsel to the current Chairman of ULLICO.

At hearing, Mr. Georgine invoked his rights under the Fifth Amendment to the U.S. Constitution, and declined to answer any of the Committee's questions.[3] Mr. Nowlin testified as to the divergence of disclosure laws applicable to pension funds and their fiduciaries from the evolving laws governing disclosure and interested party transactions in the public company arena, and whether actions taken by members of

---

[2] *See* Hearing on "The ULLICO Scandal and Its Implication for U.S. Workers" before the Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, First Session, Serial No. 108-19 (hereinafter, "Hearing on ULLICO Scandal"). The transcript of that hearing is attached to this report at Appendix E.

[3] *See id.* at 10.

ULLICO's board were potentially violative of federal labor and pension laws.[4] Mr. Silvers, counsel to the current Chairman of the Board of Directors of ULLICO, testified as to actions the new Board of ULLICO had taken since Mr. Georgine's resignation from the Company, and the factual predicates leading to that resignation.[5]

This report outlines the Committee's findings and conclusions relating to its investigation of ULLICO based upon the documents and information received and reviewed by the Committee, the testimonial evidence of witnesses at hearing, and independent research and review conducted by Committee staff.

COMMITTEE FINDINGS

The Committee's factual and legal findings are set forth below.

Factual Findings

ULLICO is a privately-held corporation, and provides insurance, pension, and financial services to unions, union members, and union pension funds.[6] ULLICO was originally founded in 1925 as the Union Labor Life Insurance Company.[7] In 1987, ULLICO, a broader financial services holding company, was formed. The Union Labor Life Insurance Company remains a wholly-owned subsidiary of ULLICO. ULLICO is incorporated under the corporate laws of the State of Maryland.[8]

Pursuant to ULLICO's bylaws, a majority of the Company's Board must be comprised of union-affiliated officers and officials.[9] The Board of Directors of ULLICO has historically consisted primarily of present or former officers of major unions and pension funds that are substantial ULLICO shareholders (during the time period in question, ULLICO's board included John Sweeney, President of the AFL-CIO, Douglas J. McCarron, President of the United Brotherhood of Carpenters and Joiners of America, and Martin Maddaloni, General President of the United Association for Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, among others).[10]

Throughout most of the Company's history, ULLICO's stock was fixed at a price of $25 per share. Historically, the Company returned value to its shareholders through the payment of cash and stock dividends on these shares.[11]

Beginning in or around 1992, the Company embarked on a more aggressive investment strategy, including capital and private equity investments. In February 1997,

---

4 *See id.* at 5-7.
5 *See id.* at 7-9.
6 The Honorable James R. Thompson, Report of the Special Counsel: ULLICO Stock Purchase Offer and Repurchase Programs and Global Crossing Investment (November 26, 2002) (hereinafter, "Thompson Report") at 15.
7 *See id.*
8 *See id.* at 55.
9 *See id.* App. I, Ex. 2 (bylaws of ULLICO Inc., Art. IV § 1).
10 *See* Thompson Report. at Ex. 1.
11 *See id.* at 15.

on the advice of then Chairman and CEO Robert Georgine, the Company approved a $7.6 million investment in a company called Nautilus LLC, which would later be known as Global Crossing, a telecommunications company associated with prominent members of the Democratic National Committee, including Democratic National Committee Chair Terry McAuliffe.[12]

At approximately the same time, the Company changed the manner in which it distributed profits to shareholders: It reduced and later eliminated dividends, and adopted a formal stock repurchase program.[13] As initially envisioned and designed by the Company, the stock repurchase program was intended to allow the Company to repurchase $180 million in stock over eleven years, with $30 million of stock repurchased in 1997, and a fixed sum of $15 million in stock to be repurchased in each of the following ten years.[14] The formal repurchase program had to be considered and approved by the Board of Directors or its Executive Committee each year it was offered.[15]

The stock repurchase program, in the words of Chairman Georgine, was intended to be a "means for [ULLICO] to provide liquidity to [its] larger shareholders."[16] The program was overseen principally by Chairman Georgine, as was a separate "discretionary" repurchase program. This "discretionary" repurchase program had apparently been in effect for a number of years, but was not formally authorized by the Board until November 2000.[17]

<u>Valuation of Stock and Purchase of Stock by Officers and Directors of ULLICO</u>

In connection with the implementation of its new stock repurchase program, the Company in 1997 changed the way in which the price of the Company's stock was calculated. Whereas historically shares of the Company's stock had been valued at a fixed price of $25 per share, under this new system the price for stock was set based on the prior year-end book value per share. Book value per share was calculated by dividing the Company's total stockholders' equity by the number of all outstanding shares (*e.g.*, in May 2001 the Company would reset the share price based on the results of the Company on December 31, 2000).[18]

In May 1997, ULLICO's stock was valued at $27.06/share.[19] When Global Crossing completed its initial public offering in August 1998, the value of Global

---

12 *See id.* at 16-17. It appears that at the same time ULLICO was authorizing this investment in Global Crossing, Mr. McAuliffe was himself investing $100,000 of his own money in what would become that failed venture. ULLICO's Senior Vice President of Investments, Michael Steed, who had been hired to assist the Company in embarking on its aggressive investment strategy, had previously been the Executive Director of the Democratic National Committee.

13 *See id.* at 18-19.

14 *See id.* at 19.

15 *See id.*

16 *See id.*

17 *See id.*

18 *See id.* at 18.

19 *See id.*

Crossing stock skyrocketed; as ULLICO was heavily invested in Global Crossing, the book value of ULLICO's own stock followed upward.[20]

In July and October 1998, ULLICO Board members were offered the opportunity to purchase up to 4000 shares of stock at a price of $28.70/share.[21] In December 1999, this offer was extended so that officers and directors could purchase an additional 4000 shares of ULLICO stock at $53.94/share.[22] Throughout this time, ULLICO's large institutional shareholders were not afforded the same opportunity.[23]

Significantly, these offers to buy shares were made weeks or even days before the Company's books for those years would close, and the shares would be revalued. With the ongoing success of Global Crossing, this meant, for example, that in late 1999, ULLICO Board members were afforded the opportunity to purchase shares at $53.94/share, at a time when they likely knew that the share price would increase significantly when the Company's books closed days later.[24]

Indeed, the questionable nature of these transactions is evidenced by the fact that PriceWaterhouseCoopers, ULLICO's auditor, was subsequently forced to restate the Company's audited financial statements because participants in the officer/director stock purchase program were not subject to any real "investment risk."[25]

<u>Repurchase of Stock from Officers and Directors of ULLICO</u>

While the Company had authorized a share repurchase program in 1997, it was rarely used until 2000. In late 2000, by which time the value of Global Crossing's shares had plummeted, the Company began to aggressively repurchase shares from its stockholders. As detailed below, the repurchase of these shares, which had been offered for purchase only to officers and directors of the Company, disproportionately inured to the benefit of the Company's Board members, at the expense of ULLICO's principal shareholders, unions, and union pension funds.

In November 2000, the ULLICO board approved a repurchase program to buy back shares at $146.04/share, with the near-certain knowledge that the Company's share value would plummet when its books closed on December 31, 2000.[26] The repurchase program was designed so that smaller shareholders (such as board members and officers) could sell back all of their shares, while larger shareholders (unions, union pension funds) were limited in their ability to sell shares. This was accomplished by way of a 10,000 share proration threshold. This threshold allowed those shareholders who held 10,000 or fewer shares to redeem all of their shares, while shareholders with more than 10,000

---

[20] *See id.* at 22.
[21] *See id.* at 25-26; 28-29.
[22] *See id.* at 31.
[23] *See id.* at 25-26, 31-32.
[24] *See id.* at 33, 35.
[25] *See id.* at 33.
[26] *See id.* at 40.

shares were required to tender all of them, but allowed to redeem only a small portion of the tendered shares.[27]

Tender offer documents issued in connection with this repurchase program indicated that the Company did not believe that any of its officers and directors intended to offer their shares for repurchase, and that the Company believed ULLICO stock to be an "excellent investment opportunity for investors seeking long term growth of capital."[28] Nor did the tender documents make clear the impact of the 10,000 share proration threshold, its effect on larger shareholders, and the benefit it would provide to directors and officers.[29]

Notwithstanding the Company's statement that it did not anticipate its officers and directors offering their shares of stock for repurchase, in the 2000 repurchase offer, 31% of the funds used to buy back stock went to officers and directors of the Company, who were permitted under the program to redeem 100% of their stock; in contrast, large stockholders were limited to a buy-back of 2.2% of their shares.[30] Numerous board members sold back their stock at this $146/share offer, which was extended through early 2001.[31] Not surprisingly in light of the financial devastation that Global Crossing had suffered, the value of ULLICO's shares was reset at $74.87/share shortly thereafter.[32]

In 2001, the Company again approved a repurchase program. This program again included a 10,000 share proration threshold, thereby again allowing officers and directors the opportunity to sell back all of their stock, while larger shareholders were limited to a buy-back of only 2.66% of their shares.[33]

In short, while board members, officers, and directors of the Company were permitted to buy and sell all of their shares, large shareholders (*e.g.*, union pension funds) were limited in their buying and selling rights. These transactions are believed to have netted approximately $6 million in profits for ULLICO Board members at the expense of union pension funds and other large shareholders of the Company, insofar as absent the program's skewed proration threshold, these monies would have been used to repurchase shares from ULLICO's larger shareholders.

It appears that this issue – specifically, that the stock repurchase program would inure to the benefit of officers and directors, but not to large shareholders – was not discussed at the Board level. Indeed, several Board members subsequently reported to Governor Thompson during his investigation that had they known of this issue, they might not have approved the program.[34] Another director reported that had he known of

---

27 *See id.* at 41-42, 44.
28 *See id.* at 45, 69 & App. Ex. 82.
29 *See id.* at 36, 44.
30 *See id.* at 45.
31 *See id.* at 47 & Ex. 1.
32 *See id.* at 49.
33 *See id.*
34 *See id.* at 47.

the impact this would have on larger shareholders, he would have "considered whether this raised fiduciary duty issues."[35]

While the Company repurchased stock through the formal repurchase program described above, throughout this time period ULLICO also employed a "discretionary" stock repurchase program, administered solely by Mr. Georgine.[36] While the Company's Compensation Committee later tried to formally "authorize" this program, it is unclear whether it had the legal authority to do so under the Company's bylaws.[37] Mr. Georgine himself was the beneficiary of this laxity, as over the years he was allowed to issue stock to himself, and later sell it back to the Company.[38]

The Thompson Report

In April 2002, in response to increasing public attention and criticism, ULLICO engaged former Illinois Governor James Thompson as Special Counsel to review the transactions at issue and report back to the board. The Committee understands that Special Counsel Thompson delivered his report to ULLICO in or around the end of November 2002.

Throughout the spring of 2003, ULLICO refused to disclose the contents of the report. In a reversal of its position, in late March 2003, ULLICO decided that it would release the Thompson Report to its shareholders. As noted above, in light of this reversal, the Committee requested that ULLICO produce a copy of the Thompson Report immediately (*i.e.*, prior to the deadline of April 17, 2003 set for the production of all responsive material). ULLICO produced a copy of the Thompson Report to the Committee on April 2, 2003.

The Thompson Report concluded that owing to the high standard of proof required in federal securities cases, it does not appear that these transactions violated federal securities law.[39] The Thompson Report did conclude, however, that it is highly likely that these transactions violated Maryland's (and potentially other states') state securities law.[40] More broadly, the Thompson report concluded that "Certain ULLICO officers and Board members arguably acted inappropriately and to the detriment of the rights of ULLICO institutional shareholders."[41] The Thompson Report recommended that all board members who profited from these transactions be required to return their profits.

Notably, pursuant to ULLICO's express direction, the Thompson Report did not examine whether any of these transactions ran afoul of federal pension or labor law, as

35 *See id.*
36 *See id.* at 38-39.
37 *See id.* at 41.
38 *See id.* at 38.
39 *See id.* at 75.
40 *See id.* at 92.
41 *Id.* at ii.

Thompson was instructed by the Company that such questions were outside of his mandate as Special Counsel.[42]

On May 8, 2003, in the face of this scandal, Mr. Georgine announced that he would resign, not seek reelection to ULLICO's board, and would sever all ties with the Company (he had previously indicated that he would not seek reelection to the board; until May 8, however, Mr. Georgine maintained that he would continue in some role at the company). That same day, Terence O'Sullivan, president of the Laborers' International Union, assumed leadership of ULLICO. Shortly thereafter, the newly-elected board voted to require all directors to return any profits from the stock transactions.

The Committee understands that ULLICO is presently under investigation by the federal Departments of Labor and Justice, as well as the Securities and Exchange Commission and a federal grand jury in the District of Columbia. In addition, the Maryland state insurance commissioner's office is conducting an investigation of the matter. These investigations are believed to be continuing as of this date.

Legal Findings

While the Committee's inquiry examined the broad range of legal issues presented by the activities of ULLICO's Board, its investigation in particular focused on potential violations of two federal laws within the Committee's plenary jurisdiction: the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 *et seq.* (the "LMRDA"), and the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* ("ERISA").

At the outset, it bears note that in commissioning a Special Counsel to investigate and report on the legality of the stock repurchase transactions, ULLICO specifically directed that Special Counsel *not* examine whether these transactions were in any way violative of federal labor or pension laws, despite their potential and recognized applicability. As the Thompson Report explained:

> **Fiduciary duties similar to those imposed by [state] law which may be applicable to self-interested transactions involving officers and directors may also arise under the Federal Labor-Management Disclosure and Reporting Procedure [sic] Act ("LMRDA") (29 U.S.C. § 501 et seq.) and the Employment [sic] Retirement Income Security Act ("ERISA") (29 U.S.C. § 1100 et seq.).** These statutes impose fiduciary duties upon individual directors who may be officers of unions or trustees of union pension funds who are ULLICO shareholders. These duties are similar to the statutory and fiduciary duties discussed above**. However, outside Company counsel have advised the Special Counsel that the Special Counsel's mandate does not extend to the consideration of the applicability of these statutes to the conduct by**

42 *See id.* at 65.

> **individual directors because of the union or pension fund positions they hold. Therefore, we have not analyzed these issues.**[43]

The Committee's findings with respect to both of these federal laws are set forth below. Particularly in light of the fact that ULLICO's own investigative counsel was advised by ULLICO not to examine the lawfulness of the stock repurchase transactions at issue under federal pension and labor laws, the Committee strongly urges those investigative authorities presently investigating these transactions to closely examine their legality under these federal statutes. Should these agencies determine that federal labor or pension laws are insufficient to adequately safeguard the rights of those whom the laws were enacted to protect, the Committee welcomes an analysis of any such deficiencies and recommended legislative or administrative solutions.

A. <u>The Labor-Management Reporting and Disclosure Act of 1959</u>: The LMRDA is widely held to be the cornerstone of democratic rights of union members. Enacted in 1959, the LMRDA was intended to ensure that rank-and-file union members have a full, equal, and democratic voice in union affairs. The LMRDA, among other things, requires that union financial matters be publicly disclosed, and prohibits union officers and officials from engaging in self-interested transactions.

Congress intended the LMRDA to ensure that union democracy would be the first line of defense against union corruption, and that armed with knowledge, union members would elect leaders who work in their members' best interests, and rid themselves of union officials who serve their own interests. In furtherance of that goal, section 105 of the LMRDA imposes a fiduciary duty on the officers and leaders of unions to act solely in the best interest of their members. Specifically, section 105 of the LMRDA provides that:

> **The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group.** It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, **to hold its money and property solely for the benefit of the organization and its members** and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and **from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization**, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization….[44]

---

[43] *See id.* at 65 (emphasis added).

[44] 29 U.S.C. § 501 (emphasis added).

In light of the unambiguous prohibition on self-dealing transactions contained in section 105, the Committee's investigation focused on whether the transactions engaged in by ULLICO Board members violated that section of the LMRDA.

At hearing, the Committee heard expert testimony that the stock transactions in question may have represented a violation of section 105 of the LMRDA.[45] The Committee remains concerned that insofar as many of the members of ULLICO's Board served simultaneously as officers of the country's largest unions,[46] the activities in which these Board members engaged – which diverted proceeds available under the Company's stock repurchase program from ULLICO's larger stockholders (*e.g.*, unions and union pension funds) to individual members of ULLICO's Board – disproportionately benefited these Board members at the expense of these unions and union funds, and their members and beneficiaries. This conduct may well have violated section 105 of the LMRDA, and may represent a breach of the fiduciary duty imposed on these union officers by this section of federal labor law.

In light of the testimony and other evidence presented to the Committee, the Committee strongly urges those regulatory agencies presently charged with investigation of the ULLICO matter to focus closely on the question of whether the actions of ULLICO and its Board may have violated section 105 of the LMRDA. Should those authorities investigating this matter determine that current law – which has not been substantively modified since its enactment in the 1950s – fails to adequately address those matters raised by the facts presented, the Committee is prepared to consider legislative change to ensure that the prohibitions contained in the LMRDA protect against the recurrence of incidents of this sort, and welcomes an analysis of this point and recommended legislative or administrative solutions from those authorities examining these transactions.

B. <u>The Employee Retirement Income Security Act</u>: To ensure that the assets of pension benefit plans would be adequately protected, Congress in 1974 enacted ERISA. ERISA provides that pension and welfare benefit plans shall be administered and overseen by plan fiduciaries, and further provides that a plan fiduciary shall discharge his or her duties with respect to an ERISA-covered plan "solely in the interest of participants and beneficiaries" with the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiarity with such matters would use.[47]

In addition to these fiduciary standards, ERISA sets forth a series of "prohibited transactions," which provide that a fiduciary shall not engage in transactions dealing with

---

[45] *See* Testimony of Warren Nowlin, Hearing on ULLICO Scandal, at 16. *See also* Thompson Report at 65 (noting potential applicability of LMRDA to stock repurchase transactions).

[46] Indeed, as noted above, ULLICO's bylaws in fact require that the majority of the membership of the Board of Directors be comprised of current union officers. *See supra at* 4 & 4 n. 9.

[47] *See* 29 U.S.C. § 1104.

the assets of the plan in furtherance of his or her own interest, and shall not receive any personal benefit from any party in connection with transactions involving plan assets.[48]

At hearing, the Committee heard extensive testimony as to the restrictions and regulations that ERISA imposes on pension plan trustees by way of the fiduciary duty of loyalty and care. Attorney Warren Nowlin testified that under ERISA, a fiduciary must execute his duties solely in the interest of plan participants and beneficiaries, holding the plan assets in trust and ensuring that such assets do not inure to the benefit of the employer.[49] This duty of loyalty requirement imposes an obligation upon fiduciaries to act with complete and undivided loyalty with an eye solely toward the interests of the participants and beneficiaries.[50] Penalties for violation include a requirement to disgorge profits made in any related-party transaction that violates the so-called prohibited transaction rules of ERISA.[51]

Attorney Nowlin further testified that the scope of the fiduciary responsibility to plan participants is much wider than generally recognized because of the broad definition of fiduciary contained in ERISA, and that under ERISA, one may be considered a fiduciary if one has an element of authority or control over the plan, including plan management, administration or disposition of assets.[52] The Committee was informed that to the extent that plan sponsors influence or maintain discretionary authority over plan management or plan investments, they are also considered to be fiduciaries.[53] Accordingly, corporate officers, directors and in some cases, shareholders, that exert sufficient control over such a plan may be deemed fiduciaries and could be held liable for a breach.[54]

The Committee remains concerned that the facts alleged with respect to the ULLICO stock transactions at issue suggest potential violations of the fiduciary duty requirements and prohibited transaction proscriptions contained in ERISA. Specifically, owing to the design of the Company's fixed-sum stock repurchase plan, and its disparate treatment of large and small shareholders, monies that would otherwise have gone to institutional shareholders under the repurchase program in fact went instead to members of ULLICO's Board of Directors. The windfall reaped by these Board members came at the expense of ULLICO's larger shareholders – notably union pension funds – the trustees and fiduciaries of which were these same Board members.

Put more simply, it appears that in numerous instances individuals were both trustees and fiduciaries of union pension plans (which plans themselves were ULLICO's largest shareholders) and members of ULLICO's Board. These individuals appear to have engaged in transactions that benefited them in their personal capacity as Board members, at the expense of the pension funds to which they owed a fiduciary duty, and,

---

48 *See* 29 U.S.C. § 1106.
49 *See* Nowlin Testimony, Hearing on ULLICO Scandal, at App. B, 45-46.
50 *See id.*
51 *See id.*
52 *See id* at 51.
53 *See id.*
54 *See id.*

accordingly, the union member participants and beneficiaries of these funds. The facts presented, if true, raise the more than colorable – and yet unanswered – question of whether the transactions undertaken by ULLICO's Board members were lawful under ERISA.[55]

The Committee urges those investigating the ULLICO matter to scrutinize these transactions closely in light of the unambiguous provisions of ERISA prohibiting self-dealing transactions and imposing fiduciary duties of loyalty on plan trustees, to ascertain whether these provisions of federal law were violated. Consistent with its position as regards potential amendment of the LMRDA, the Committee stands ready to consider legislative solutions or amendment to ensure that the protections included in ERISA are sufficient to guard against similar incidents and that the statute effectively protects plan participants in accordance with Congressional intent. In that light, the Committee welcomes an analysis of the sufficiency of ERISA's fiduciary duty standards and self-dealing transaction prohibitions, and any recommended amendment thereof, from those authorities examining these transactions.

[55] *Cf.* Thompson Report at 65 (noting potential applicability of fiduciary standards contained in ERISA to Board members' conduct and ULLICO's direction that Special Counsel not investigate or opine on potential ERISA violations).

CONCLUSION

Based on its investigation detailed above, and the documentary and oral evidence received and reviewed in the course of that investigation, the Committee remains deeply concerned that the transactions undertaken by certain members of ULLICO's Board of Directors in connection with the Company's stock repurchase program may have violated the Labor-Management Reporting and Disclosure Act of 1959 and/or the Employee Retirement Income Security Act of 1974. The Committee strongly recommends that those regulatory and investigative authorities currently investigating ULLICO and these transactions give the closest scrutiny to their lawfulness under the aforementioned federal labor and pension laws. Should these agencies determine that federal labor or pension laws are insufficient to adequately safeguard the rights of those whom the laws were enacted to protect, the Committee welcomes an analysis of any such deficiencies and recommended legislative or administrative solutions. The Committee in turn will continue the vigorous exercise of its oversight authority to ensure that these laws are effective in protecting the rights of American workers, and if they are not, in considering legislative solutions.

APPENDICES

Appendix A: ***Requests for Production by ULLICO Inc. from the Committee on Education and the Workforce (March 18, 2003)***

Appendix B: ***Letter from the Honorable John A. Boehner, Chairman, Committee on Education and the Workforce, to Robert A. Georgine, Chairman of the Board, ULLICO Inc. (March 31, 2003)***

Appendix C: ***Subpoena Testicandum to Robert A. Georgine (May 8, 2003)***

Appendix D: ***Subpoena Testicandum to Robert A. Georgine (May 21, 2003)***

Appendix E: ***Hearing on "The ULLICO Scandal and Its Implication for U.S. Workers" before the Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, First Session, Serial No. 108-19***

COMMITTEE ON EDUCATION
AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

2181 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6100

MAJORITY–(202) 225-4527
(TTY)–(202) 226-3372
MINORITY–(202) 225-3725
(TTY)–(202) 226-3116

March 18, 2003

Via Facsimile and First Class Mail

Robert A. Georgine
Chairman, President & CEO
ULLICO, Inc.
111 Massachusetts Ave. NW
Washington DC 20001

Dear Mr. Georgine:

Pursuant to the constitutional authority of the House of Representatives and the authority provided by Rules X and XI of the House of Representatives, the Committee on Education and the Workforce (herein the "Committee") is investigating matters within its legislative and oversight jurisdiction regarding alleged misconduct of individuals associated with ULLICO, Inc.'s Board of Directors, including but not limited to the methodology employed for the valuation of the corporation's stock; the purchase and sale of this stock by officers, directors and other shareholders of the corporation; the effect these transactions had on the corporation's union and multi-employer benefit plan shareholders; and related matters.

By this letter, the Committee hereby requests the production of documents, records, or other materials responsive to the Requests for Production set forth below, in conformance with the General Instructions and Definitions set forth herein.

Unless otherwise specified, the time period encompassed by the request is January 1, 1997 to the present date. In addition, please note the continuing nature of these Requests pursuant to General Instruction 11 and your duty of timely supplementation thereunder.

The Committee requests your response no later than 5:00 p.m. on Thursday, April 17, 2003.

GENERAL INSTRUCTIONS

1. In complying with these Requests, you are requested to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and/or representatives acting on your behalf. You are also requested to produce documents that you have a legal right to obtain, documents that you have a right to copy or have access to, and documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by any Request(s) shall be destroyed, modified, removed or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in any Request(s) has been, or is also known by any other name than that herein denoted, the Request(s) shall be read to also include them under that alternative identification.

3. Each document produced shall be produced in a form that renders the document susceptible of copying.

4. Documents produced in response to these Requests shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the Request(s) was made, and shall be identified as to which Request(s) such documents are responsive.

5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.

6. If any of the requested information is available in machine-readable form (such as punch cards, paper or magnetic tapes, drums, disks, core storage, CD-rom, or otherwise), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.

7. If any Request(s) cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.

8. In the event that a document is withheld on the basis of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

9. If any document responsive to any Request(s) was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author,

subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

10. If a date set forth in any Request(s) referring to a communication, meeting, or other event is inaccurate, but the actual date is known to you or is otherwise apparent from the context of the Request(s), produce all documents which would be responsive if the date were correct.

11. These Requests are continuing in nature. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.

12. All documents shall be Bates stamped sequentially and produced sequentially, and a log shall be provided indicating each document, a description of the document, and its Bates number(s), author, and source.

13. Two sets of documents shall be delivered, one set for the Majority Staff and one set for the Minority Staff.

DEFINITIONS

1. The words “document” and/or “record” are used in the broadest sense and means, without limitation, any writing or recording of any type or description, whether printed or recorded (mechanically or electronically), or reproduced by hand, and whether provided by plaintiff or defendant or not, including, without limitation, any letters, e-mails, correspondence, telegrams, memoranda, notes, records, reports, financial statements, statistical and financial records, minutes, memoranda, notices or notes of meetings, telephone or personal conversations, telephone records or conferences or other communications, envelopes, interoffice, intra-office or intra-company communications, microfilm, microfiche, tape records, videotapes, photographs, bulletins, studies, plans, analyses, notices, computer and/or e-mail records, runs, programs or software and any codes necessary to comprehend such records, runs, programs or software, books, pamphlets, illustrations, lists, forecasts, brochures, periodicals, charts, graphs, indices, bills, pamphlets, illustrations, lists, forecasts, statements, files, agreements, contracts, sub-contracts, completed forms, schedules, work sheets, data compilations, policies, amendments to policies or contracts, training manuals, operator’s manuals, user’s manuals, calendars, diaries, test results, reports and notebooks, opinions or reports of consultants, and any other written, printed, typed, recorded, or graphic matter, of any nature, however produced or reproduced, including copies and drafts of such documents, and any and all handwritten notes or notations in whatever form. The term “document” also includes all data or documentation that is stored in a computer or other storage device and can be printed on paper or tape, such as drafts of documents and/or e-mails that are stored in a computer or word processor and information that has been

input into a computer or other storage device, as well as disks or other materials in which the data or documentation is found.

2. The term “communication” includes, without limitation, every manner or means of statement, utterance, notation, disclaimer, transfer or exchange of information of any nature whatsoever, by or to whomever, whether oral or written or whether face-to-face, by telephone, mail, personal delivery or otherwise, including but not limited to, correspondence, conversations, dialogue, discussions, meetings, interviews, consultations, agreements and other understandings.

3. The terms “Corporation” and/or “ULLICO” refer to ULLICO, Inc.; its subsidiary the Union Labor Life Insurance Company; each of the foregoing entities’ attorneys, investigators, agents, affiliates, representatives, shareholders, officers, trustees, directors; and all persons acting on either or both of the foregoing entities’ behalf or in either or both of the foregoing entities’ service.

4. The term “Board” refers to the Board of Directors of ULLICO and its members, attorneys, investigators, agents, managers, employees, affiliates, representatives, shareholders, officers, trustees, directors, and all persons acting on its behalf or in its service.

5. The words “person” and/or “individual” means all natural persons, corporations, business entities, partnerships, associations, firms, any governmental agency, department, administration, bureau or political subdivision thereof, and any other type of organization or entity.

6. The words “concerning” and/or “regarding” shall be construed to mean referring to, relating to, supporting, constituting, embodying, discussing, describing, depicting, illustrating, recording, summarizing, evidencing, demonstrating, reflecting, containing, studying, analyzing, considering, explaining, mentioning, showing, commenting upon and resulting from.

7. The words “and” and “or” shall each be considered both conjunctively and disjunctively to mean “and/or.”

8. The term “identify,” when used in reference to a natural person, means to supply the following information: (a) the person’s name; (b) the person’s present and/or last known residential address and telephone number; (c) the name and address of the person’s present and/or last known place of employment; and (d) the person’s present or last known business title or position.

REQUESTS FOR PRODUCTION

1. Please produce copies of ULLICO's Articles of Incorporation, By-Laws, and any other documents concerning the rules of procedure for the conduct of Board meetings of the Corporation.

2. Please produce copies of all documents concerning any codes or standards of ethical or professional behavior applicable to any member of the Board by virtue of his or her membership on the Board or his or her membership in any "labor organization," as that term is defined at 29 U.S.C. § 152(5).

3. Please identify all of the Corporation's stockholders, officers, and Board members.

4. Please produce complete copies of all minutes, memoranda or other written record of the Corporation's Board meetings, and any other minutes, memoranda or other written record of any other group or subcommittee of ULLICO, its officers, employees or directors concerning the valuation, sale, re-purchase or options of Corporation stock for the same period.

5. Please produce any and all documents, including emails or other electronic communication, regarding the retention of Credit Suisse First Boston Corporation to perform services to the Corporation related to the valuation of the Corporation's stock.

6. Please produce any and all documents, including internal reports, contractor/consultants reports, regarding the methodology and the valuation of the Corporation's stock.

7. Please produce a complete accounting of the amount of shares in the Corporation held by each of its stockholders.

8. Please produce all documents relating to any stock option programs, stock purchase or re-purchase programs of the Corporation, including but not limited to letters, correspondence, emails or other electronic communication, and/or notices to any and all shareholders, officers, or directors of the Corporation informing them of any such programs.

9. Please produce a list of all shareholders, officers, or directors of the Corporation who exercised any stock option(s) for shares of Corporation stock for the period of 1997 through the present.

10. Please produce all documents, including any letters, correspondence, emails or other electronic communication, and any responses to such communications, by any officer, director, employee, or other agent of the Corporation or from any shareholder, director or officer of the Corporation regarding the valuation of the

Corporation’s stock, or any sale or re-purchase of that stock by any shareholder, director or officer of the Corporation, including but not limited to all correspondence from the Chairman of the Corporation to any individual(s) regarding same.

11. Please produce all documents concerning any report to the officers, Board, or shareholders of the Corporation prepared by the Honorable James R. Thompson, Jr. and a copy of said report.

12. Please produce all documents, to the extent not encompassed in any of the above Requests, provided to the Department of Labor, Department of Justice, Securities and Exchange Commission, and/or any other government agency from January 1, 1997 to the present in response to any investigation of the Corporation and/or any member(s) of its Board, or in response to any request for production of documents and/or request for information concerning the Corporation and/or any member(s) of its Board by any of the foregoing agencies.

* * * * *

Thank you in advance for your assistance and cooperation. Please contact David Connolly or Jo-Marie St. Martin of the Committee staff at (202) 225-7101 or (202) 225-4527 if you have any questions or require additional information.

Sincerely yours,

/s/
John Boehner
CHAIRMAN

COMMITTEE ON EDUCATION
AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MAJORITY–(202) 225-4527
(TTY)–(202) 226-3372
MINORITY–(202) 225-3725
(TTY)–(202) 226-3116

March 31, 2003

<u>Via Facsimile and First Class Mail</u>

Robert A. Georgine
Chairman, President & CEO
ULLICO, Inc.
111 Massachusetts Ave. NW
Washington DC 20001

Dear Mr. Georgine:

We write with reference to the House of Representatives Committee on Education and the Workforce (the "Committee")'s Requests for Production (the "Requests") to ULLICO, Inc. ("ULLICO") dated March 18, 2003 and received by ULLICO on even date.

The Committee notes with interest media reports indicating that ULLICO's Board of Directors (the "Board") announced on March 28, 2003 that it would release publicly a certain report to the Board prepared by the Honorable James R. Thompson, Jr. (the "Thompson Report"), the production of which was called for, *inter alia*, in Request No. 11 of the Committee's Requests.

It is the Committee's position that ULLICO's immediate production of the Thompson Report is essential to the Committee's investigation of those matters within its legislative and oversight jurisdiction as set forth in detail in the Requests. ***In light of this fact, the Committee requests that a copy of the Thompson Report be provided to the Committee no later than the close of business on Tuesday, April 1, 2003.***

Please note that the production of the above-requested information is subject to the Definitions and General Instructions contained in the Requests. Note further that such delivery does not serve to relieve or in any way diminish ULLICO's obligations with respect to the remainder of the Requests (including but not limited to the production of those documents concerning the Thompson Report set forth in Request No. 11), which responsive production is to be made no later than the close of business on April 17, 2003.

You or your designee may contact Jim Paretti of the Committee's staff at 202-225-7101 to arrange for the immediate delivery of the Thompson Report as set forth herein.

The Committee appreciates your anticipated cooperation in this matter.

Sincerely yours,

John Boehner
CHAIRMAN

Subpoena to Testify (Hearing)

By Authority of the House of Representatives of the Congress of the United States of America

To Robert A. Georgine, Chairman, President, and Chief Executive Officer ULLICO Inc.

You are hereby commanded to be and appear before the Committee on Education and the Workforce of the House of Representatives of the United States, of which the Hon. John A. Boehner is chairman, in Room 2175 of the Rayburn Building, in the city of Washington, on June 10, 2003, at the hour of 10:30 a.m., then and there to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To Jo-Marie St. Martin or any U.S. Marshall to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 8th day of May, 2003

John A. Boehner

The Honorable John A. Boehner

Chairman.

Attest:

Jeff Trandahl

Clerk.

Subpoena for Robert A. Georgine

Chairman, President, and Chief

Executive Officer ULLICO Inc.

before the Committee on the

Education and the Workforce

Served

House of Representatives

GPO 2001 73-908 (mac)

Subpoena to Testify (Hearing)

By Authority of the House of Representatives of the Congress of the United States of America

To Robert A. Georgine, Chairman, President, and Chief Executive Officer ULLICO Inc.

You are hereby commanded to be and appear before the Committee on Education and the Workforce of the House of Representatives of the United States, of which the Hon. John A. Boehner is chairman, in Room 2175 of the Rayburn Building, in the city of Washington, on June 17, 2003, at the hour of 10:30 a.m., then and there to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To Jo-Marie St. Martin or any U.S. Marshall to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 21st day of May, 2003

John A. Boehner

Chairman.

Attest:

Jeff Trandahl

Clerk.

Subpoena for Robert A. Georgine

Chairman, President, and Chief

Executive Officer ULLICO Inc.

before the Committee on the

Education and the Workforce

Served

House of Representatives

GPO: 2001 73-908 (mac)

Appendix E:

Link to committee printed hearing: “The ULLICO Scandal and Its Implications for U.S. Workers”, June 17, 2003

http://a257.g.akamaitech.net/7/257/2422/27aug20031230/www.access.gpo.gov/congress/house/pdf/108hrg/88814.pdf

Minority Views: ULLICO Investigation

I. Introduction

During the past two years, hard-working Americans throughout our country have lost hundreds of millions in irreplaceable life savings because of the unconscionable – and often illegal – behavior of those charged with managing their retirement savings and other investments. Numerous individuals have already admitted criminal liability, and many others are under investigation by the Securities Exchange Commission, Department of Labor, and other agencies.

The events at ULLICO and the large scale corporate criminality represent profoundly contrasting case studies on how labor officials on one hand, and high ranking corporate officials on the other, responded in the face of serious allegations of misconduct and illegality at their institutions.

The corporate scandals, well documented in the press, represent a breathtaking series of corporate obstruction, secrecy, destruction of documents, misrepresentations, and fraud perpetrated by companies like Enron, Global Crossing, and WorldCom and others. In the face of public scrutiny by the press and law enforcement, corporate officials – often aided and abetted by their accountants, law firms, and investment bankers – together continued their cover-up and denied responsibility until law enforcement officials were literally knocking down the door with fists of subpoenas and search warrants. Taken together, the unlawful looting of companies by top officials, and failure to take responsibility for their actions – resulted in billions of dollars in lost nest-eggs of employees, and losses by investors.

By contrast, when union officials at ULLICO became aware of questionable transactions, they moved quickly to investigate allegations of self-dealing by its board; insisted on publishing the results; demanded the return of excess profits; insisted on the removal of (and has filed suit against) directors who did not cooperate; and implemented new, strict reforms for members to follow in the future. Unlike the considerable losses in the corporate scandals, no employee lost one cent of their pension, or 401(k) nest-eggs. In fact, the ULLICO investments on which this investigation turns made a net profit of over $300 million for the company and shareholders on an investment $7.6 million. The activities of these directors – who wrongly took a disproportionate share of the profits for themselves – cannot in any way be condoned; but the response of union officials to act in the interest of their shareholders was swift and responsible.

Assuring the retirement security of Americans is one of the most important responsibilities of the Committee on Education and the Workforce. And yet, despite repeated requests from the Democrat Minority for a thorough investigation of these scandals, the **Committee** has held only one public hearing limited to the Enron debacle. There has been no serious effort at investigating the weaknesses in current law and regulatory oversight that allowed these tragic abuses to continue. Nor has the Majority proposed any legislation to address the hundreds of millions of dollars in 401(k) investments lost by employees and other investors at WorldCom, Lucent Technologies, Global Crossing, Dynegy, and other companies due to corporate fraud and abuse.

It is therefore curious that while ignoring urgent calls to investigate serious misconduct at these companies, the Majority has focused so much time, attention and staff energy on alleged labor union misconduct. Despite the unsubstantiated speculation of the Majority staff, after all this effort we still do not know if there was criminal conduct by some at ULLICO. That is a matter for the courts to determine. However, we do know that unlike the various corporate scandals that have been largely ignored by the Committee and about which no reports have been issued, no criminal actions have been brought to date regarding ULLICO.

Last week, the Committee distributed what it claims to be a "Report of the Committee" on the activities of ULLICO. It enumerates various factual matters regarding the ULLICO investments, but omits numerous self-correcting actions by the new ULLICO Board and reforms proposed by ULLICO board members. The Minority was never asked or permitted to participate in preparing the report.

We are surprised that the "Committee Report" notes that the Majority "stands ready" to consider legislation to "ensure that the protections included in ERISA are sufficient to protect plan participants".

In fact, Majority members have repeatedly voted against amendments offered by the Minority to strengthen ERISA protections for the retirement security of millions of employees.

- They rejected amendments that would prevent future executives like Ken Lay from dumping company stock without notifying employees (21D-25R).
- They rejected efforts to make sure that corporate abusers like Ken Lay and Bernard Ebbers are held accountable for the pension losses they caused, and that funds are available to pay the victims (21D-24R).
- The Majority rejected proposals to give employees a voice on pension boards (19D-25R). They rejected a proposal to curtail lavish pension perks set aside for company executives (20D-26R).
- They rejected an amendment to allow employees to diversify their own 401(k) investments in company stock after one year (18D-27R).
- They rejected an amendment that would provide workers with independent investment advice, rather than the Majority's proposal to allow financial firms to offer conflicted investment advice to employees for the first time since ERISA was enacted (21D &1R- 25R).
- Finally, they rejected an amendment to ERISA that would ensure that older employees would not have their benefits reduced by as much as 50% if their plan was converted to a cash balance plan (19D & 1R-23R).

II. Discussion of ULLICO Transactions

The details of the ULLICO dispute are contained in Governor Thompson's Report to the ULLICO Board. This document was prepared at the request of the ULLICO Board and the ULLICO Board has adopted its findings. As a result of the findings and recommendations of the Thompson Report, a number of directors voluntarily returned their stock profits, and the Board of ULLICO has demanded that all those who profited from the transactions in question return said profits. ULLICO has removed from the Board, for cause, any director who had not made arrangements to return their profits. Earlier this month, ULLICO filed a counterclaim in U.S. District Court in Washington DC alleging breaches of fiduciary duty, violations of employment contracts and other wrongful acts by former officers and seeking tens of millions of dollars in damages. ULLICO has told Minority staff that further litigation against all other directors who have failed to make arrangements to return profits is imminent.

The evidence provided to the Committee amply demonstrates that these events are the culmination of an effort by current directors and shareholders of ULLICO to determine the facts of the stock transactions at issue, and to hold those who committed wrongful acts accountable. While this Committee's efforts to obtain the Thompson Report are commendable, they followed by more than six months similar efforts by leaders of the labor movement. The most unfortunate aspect of the Majority's report is its refusal to recognize this sustained and ultimately successful effort by the labor movement to initiate an independent inquiry, obtain the release of the results, remove those who committed wrongful acts from office, and hold them legally and financially accountable for their actions.

As **Business Week** pointed out, there is no comparable record of aggressively dealing with corporate wrongdoing in the world of business. ("Big Labor's Governance Lesson; At Scandal-Tainted ULLICO, AFL-CIO Leaders Oust One of Their Own as CEO and Set an Example Corporate America Should Heed," Aaron Bernstein, *Business Week Online*, May 27, 2003).

This Committee's unbalanced report fails to acknowledge those in unions who acted responsibly and sought to hold those who acted improperly accountable, and ignores the ongoing effort of the new management of ULLICO to recover wrongfully obtained stock profits to the company.

III. Chronology of Events

As the Thompson Report indicates, the misconduct in question occurred during the period from 1998 to 2001, with the sales of stock by officers and directors occurring in 2000 and 2001. As the Majority report indicates, critical facts about the events were withheld from ULLICO's Board of Directors. (See Majority Views on page 7)

In mid-March 2002, detailed accounts of the key events in question appeared in the Wall Street Journal and in **Business Week**, apparently as a result of a leak from company insiders. Within days of the appearance of these accounts, John Sweeney, the President of the AFL-CIO and at the time a Board member of ULLICO, sent a letter to Robert Georgine, then Chairman and CEO of ULLICO, asking that ULLICO's Board launch an independent investigation with independent outside counsel.

At a special Board meeting in late April, the Board of ULLICO appointed Governor Thompson as special counsel to conduct the investigation. The Board resolution gave Thompson a broad mandate to inquire into matters related to stock trading by ULLICO officers and directors.

Thompson conducted his investigation in the summer and early fall of 2002. As the Majority report notes, the management of ULLICO asked that he not address issues of ERISA and labor law in his report. However, the Majority report fails to note that Thompson agreed with the request and has continued to say that this was the right decision, largely it appears because he felt that the core issues at stake in this matter involved corporate, securities, and criminal law, not labor law or ERISA.

In September 2002, Thompson began to conclude his investigation, and ULLICO management began an effort to prevent his report from being released. This led to a series of increasingly hostile letters between Thompson, John Sweeney of the AFL-CIO, and Robert Georgine, which focused on whether the Thompson Report would be made in writing and if so, whether it would ultimately be made available to shareholders. It was also in this period that United Brotherhood of Carpenters President Douglas McCarron, a ULLICO board member, announced prior to the release of the Thompson Report that he was returning to ULLICO his profits on the sale of ULLICO stock.

The Thompson Report was completed and made available to the Board of ULLICO on November 26, 2002. Rather than be party to withholding the report from shareholders, ULLICO directors John Sweeney, Linda Chavez-Thompson and Frank Hanley, President of the International Union of Operating Engineers, all resigned from the Board in protest. Shortly thereafter Carpenters President Douglas McCarron resigned from the Board in protest. This was followed by benefit plans affiliated with the United Auto Workers filing suit in federal court in Detroit seeking the release of the Thompson Report.

ULLICO then appointed a Special Committee to review the Thompson Report. Hotel Employees and Restaurant Employees Union President and ULLICO director John Wilhelm and Laborers International Union of North America President Terrence O'Sullivan both served on that committee and fought for the adoption of the Thompson Report's recommendations that those who profited from the stock transactions return their profits. When O'Sullivan and Wilhelm found themselves in the minority, Wilhelm resigned from the Board, and O'Sullivan took a leading role from within the Board in working with ULLICO shareholders and the broader labor movement to effect a change in ULLICO management on May 8, 2003.

On May 8th, the new Board members joined with certain continuing Board members to elect Terrence O'Sullivan Chairman and CEO, and to adopt the Thompson Report. They also demanded the return of the stock profits, and to take the steps that resulted in the removal from the Board and the company all individuals who refused to return their profits from the improper stock transactions. The new majority of the new Board consists of current officers of labor organizations, and the Board also includes individuals like former Congressman, Federal Judge and White House Counsel Abner Mikva, former Secretary of Labor Alexis Herman, and former Chairman of the New York Metropolitan Transit Authority Richard Ravitch. Judge Mikva has led since May a special subcommittee of the Board charged among other things with implementing the Thompson Report.

ULLICO has demanded the return of the stock profits as recommended by Governor Thompson. Directors and Former Directors Morton Bahr, Martin Maddaloni, Douglas McCarron, James La Sala, and Kenneth Brown have done so voluntarily or are in the process of doing so. Since the Majority noted the presence of John Sweeney, Douglas McCarron and Martin Maddaloni on the ULLICO Board during the events in question, it seems only fair to note that John Sweeney demanded the investigation that enabled this Committee to have the benefit of the Thompson Report; that Douglas McCarron was the first person to return his stock profits voluntarily to ULLICO and later resigned in protest over management's efforts to suppress the Thompson Report; and that Martin Maddaloni, the only one of the three who is a continuing director, voted to adopt the Thompson Report and is in the process of voluntarily returning his stock profits as well.

IV. Conclusion

The Majority's "Committee Report" fails to recognize the initiatives of labor leaders who acted aggressively to protect their members and their members' pension funds even when that meant driving from office and ultimately suing their own colleagues. While no one condones the improper actions ascribed to the former ULLICO Board, it seems only fair to recognize leaders in our society who act responsibly and forthrightly at a time when there have been so many examples of others looking the other way while the companies they were responsible for were destroyed and the life savings of innocent men and women were lost. The Majority's biased and distorted report ignores these responsible actions by the leaders of the labor movement that occurred not in response to congressional inquiries, but a year before the Committee even scheduled a hearing on the ULLICO matter. We are still awaiting comparable scrutiny of far larger abuses by the executives of Enron, Global Crossing and other corporations.

____

GEORGE MILLER